

The Telecommunications Excise Tax is not imposed upon sales made to the Federal government. See, Section 2(1) of the Telecommunications Excise Tax Act (630 ILCS 2(1)). (This is a PLR.)

July 6, 2000

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>) is in response to your letter received April 10, 2000. On May 16, 2000, the Department received a facsimile transmission which furnished the additional information that would allow us to issue a Private Letter Ruling. Review of these materials disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to the COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither the COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter you have stated and made inquiry as follows:

This follows up your conversation with PERSON last week, wherein you agreed that the COMPANY is exempt from the payment of state utility taxes.

I am requesting that the Department of Revenue issue a private letter ruling indicating that the COMPANY is exempt from the payment of utility taxes as set forth in Illinois' Telecommunications Excise Tax Act, 35 ILCS 630/1 et seq. And Electricity Excise Tax Law, 35 ILCS 640/2-1 et seq. Both laws provide that the taxes are not imposed on the act or privilege of using these services "to the extent such act or privilege may not, under the Constitution and statutes of the United State, be made the subject of taxation by the State." 35 ILCS 630/3; 35 ILCS 640/2-2 (3).

As provided in the law, both the telecommunications and electricity taxes are imposed directly on the consumer of the service - in our case, the COMPANY. It is well settled that state or local taxation that imposes a direct burden on the federal government is generally considered invalid. As part of the executive branch of the United States Government, 39 USC sec. 201, the COMPANY is free from being taxed by any state or local government through the Supremacy Clause of the Constitution of the United States. In M'Culloch v. Maryland, 17 U.S. (4 Wheat) 316 (1819), the Supreme Court first articulated the intergovernmental tax immunity doctrine. In M'Culloch, the Court

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invalidated a tax imposed by the State of Maryland on the Bank of the United States. Although the boundaries of the doctrine have shifted through the years, the Supreme Court always has held that it is unconstitutional for a state to tax the Federal Government directly.

Please be advised that the tax period that is at issue is August 1, 1998 and subsequent years for the Electricity Exercise Tax and July 1, 1997 and subsequent years for the Illinois Telecommunication Exercise Tax. In addition, there is no audit or litigation that is pending with the Illinois Department of Revenue regarding these tax issues. Further, to the best of our knowledge, the Illinois Department of Revenue has not previously ruled on the same or similar issues for the COMPANY nor did the COMPANY, prior to our initial April 3, 2000 letter, submit a similar request for a Private Letter Ruling from the Department. Further, no similar letter with the same issues was sent to the Department and withdrawn before a letter ruling was issued. I believe this supplemental letter now satisfies the requirements for the Department to issue a Private Letter Ruling.

The Telecommunications Excise Tax is imposed upon the act or privilege or originating or receiving interstate and intrastate telecommunications by a person in this State at the rate of 7% of the gross charges for such telecommunications purchased at retail from a retailer by such person. Although the tax is imposed upon the user of telecommunications, it is required to be collected from users and remitted to the Department by telecommunications retailers maintaining a place of business in this State. See, Sections 3 and 4 of the Telecommunications Excise Tax Act ("Act"), 35 ILCS 630/3 and 630/4. However, the Act provides that the tax is not imposed on the act or privilege to the extent such act or privilege may not, under the Constitution and statutes of the United States, be made the subject of taxation by the State. Id. In addition, Section 2(1) of the Act provides that a "sale at retail" does not include sales of telecommunications to the Federal government. See, 630 ILCS 2(1).

Section 2-4 of the Electricity Excise Tax Law ("Law") imposes a tax upon the privilege of using in this State electricity purchased for use or consumption and not for resale. See, Section 2-4 of the Law, 35 ILCS 640/2-4. In addition to other enumerated exemptions, the tax does not apply to "any transaction in interstate commerce, or otherwise, to the extent to which such transaction may not, under the Constitution and statutes of the United States, be made the subject of taxation by this State." See, Section 2-4 (c) of the Law. Like the Telecommunications Excise Tax, the Electricity Excise Tax is imposed upon the user of electricity and is generally collected from the user and remitted to the Department by delivering suppliers maintaining a place of business in this State.

The Department recognizes the COMPANY as part of the Federal government. Section 201 of the United States Code, as you point out, states that "[t]here is established, as an independent establishment of the executive branch of the Government of the United States, the COMPANY." See, 39 U.S.C. 201. The Code of Federal Regulations further provides that "[t]he [COMPANY] has been established

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as an independent establishment within the executive branch of the Government of the United States under the provisions of the [XXXXX] Act of August 12, 1970, Pub. L. 91-375, 84 Stat. 719." See, 39 C.F.R. 221.1.

The Department is precluded from imposing a tax on the Federal government by virtue of the provisions of the Supremacy Clause of the Constitution. Sections 3 and 4 of the Act recognize this limitation in providing that tax does not apply to the extent such act or privilege of originating or receiving interstate or intrastate telecommunications may not, under the Constitution and statutes of the United States, be made the subject of taxation by the State. This limitation is also recognized by the terms of Section 2(1) of the Act, which provides that sales at retail do not include sales to the Federal government. Section 2-4 of the Law contains virtually identical limitations upon the State's authority to tax the use of electricity. The incidence of the Telecommunications Excise Tax falls upon the COMPANY. The incidence of the Electricity Excise Tax also falls upon the COMPANY. As part of the Federal government, however, the COMPANY's purchases of telecommunications are not subject to tax under the Act. Similarly, the COMPANY's purchases of electricity under the Law are not subject to tax. In neither instance can tax be imposed due to the provisions of the Supremacy Clause of the Constitution.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217)782-3336.

Very truly yours,

Jerilynn T. Gorden
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